

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.300 OF 2005

Jaisun and Hutchison Controls Pvt. Ltd. ... Petitioner.

vs.

M/s.Bharat Petroleum Corporation Ltd. Respondent.

Mr.Sudeep Sen i/b. Ashwin Shankar, for Petitioner.

Ms.S.John i/b. M/s.M.P.Savla & Co.for Respondent.

CORAM: D.K.DESHMUKH, J.

DATED: 5th December, 2005

P.C.:-

1. By this petition filed under Section 34 of the Arbitration and Conciliation Act, the petitioner challenges the Award made by the sole Arbitrator dismissing the claims made by the petitioner. The petitioner was the claimant before the learned Arbitrator and it is the petitioner who had invoked the arbitration clause. The only ground raised before me is that in view of the amended clause 91 of the contract between the parties, the arbitrator should have made the award within a period of two years after entering upon the reference or

within such extended time not exceeding further 12 months as the arbitrator may by an order in writing fix. According to the petitioner, the reference was made on 24.9.2001 and the learned arbitrator has made the Award on 21.5.2005. According to the learned Counsel, therefore, the Award is liable to be set aside because it is made beyond the period fixed by the agreement between the parties. The learned Counsel in support of his contention relied on Section 15 of the Arbitration and conciliation Act, 1996 and submitted that on expiry of period of two years i.e. from 25.1.2002 the mandate of the Arbitrator stands terminated and therefore, the learned Arbitrator could not have proceeded to make the Award. Admittedly written argument was filed by the petitioner before the learned Arbitrator after 25.1.2002 and therefore, if according to the petitioner, the mandate of the petitioner came to an end after expiry of the period of 2 years i.e. from 25.1.2002, the petitioner could have raised the objection under sub-section (2) of Section 15 of the Arbitration and Conciliation Act before the learned Arbitrator pointing out the learned Arbitrator that his mandate came to an end and therefore, he has lost the jurisdiction to make the Award. However, such objection has not been admittedly raised by the petitioner. In view of Section 4 of the Arbitration & Conciliation Act, failure to raise objection to the jurisdiction of the learned Arbitrator immediately after the petitioner became entitled to raise the objection, amounts to waiver of the objection. Secondly, perusal of Section 15 of

the Act shows that if the mandate of the Arbitrator has come to an end because of the agreement between the parties, then it is for the party who had invoked the clause to get the arbitrator appointed, to move and take steps to get substitute arbitrator appointed. Thus, if according to the petitioner the mandate of the Arbitrator came to an end on expiry of period of two years i.e from 25.1.2002, then it was for the petitioner to take steps in terms of sub section (2) of Section 15 of the Act to get another arbitrator appointed. But the petitioner did not take any such step, but the petitioner took chance before the arbitrator. The petitioner is now raising the plea of termination of the mandate of the learned Arbitrator because the Award has gone against the petitioner. Thus, the petitioner is trying to take advantage of its own wrong. The petitioner tried to take chance before the learned arbitrator to get the Award in its favour and when the petitioner did not get the Award in its favour, now the petitioner is claiming that the Award is vitiated because of termination of the mandate of the learned Arbitrator, so that the petitioner can have one more attempt to have award in its favour. In my opinion, such attempt of the litigant is required to be discouraged. I do not find any substance in the petition. Hence, the petition fails and is dismissed. The petitioner to pay cost of this petition to the respondent as incurred by the respondent.